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Office of the Attorney General

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*Opinion No. 527
8797*

March 29, 1985

The Honorable Virginia T. Hafen
Register of Mesne Conveyance
Spartanburg County Courthouse
Spartanburg, South Carolina 29301

Dear Mrs. Hafen:

You have requested the advice of this office as to whether you must record a cancellation of a mortgage of real property which has allegedly been signed by the mortgagees but not the recorded assignees of the mortgage. You have provided the following information to this office:

- 1) The original mortgage from A to B and C was recorded in 1980.
- 2) In 1983, your office recorded an assignment from C to D and F, "Executors and Trustees under the will of [B, Deceased]..."
- 3) Earlier in 1985, you were presented with a cancellation of this mortgage which was signed by B and dated in 1980. Cancellation had not been signed by C or by D and F. You refused to record the cancellation.
- 4) You were later presented with the same cancellation with the addition of the signature of C. Based upon this information, this office assumes that the signature of C was added in 1985.

Because the interest of C was recorded in 1983 as being assigned, her assignees D and F would have to execute the cancellation. A reading of Sections 30-7-20 through 30-7-50 of the Code of Laws of South Carolina, 1976, clearly indicates that properly recorded assignments are effective as to subsequent

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A reading of Section 29-3-330(1) and (2) of the Code also makes clear that such assignees of the mortgage should sign the cancellation. Although the person to execute the satisfaction is described in terms of the "mortgagee or other person being the owner or holder of", a reading of this provision with reference to the earlier statute cited above concerning assignments clearly indicates that the assignee rather than the initial mortgagee should execute the cancellation. See: Sutherland Statutory Construction, Vol. 2A §51.02 (4th Ed.); Union National Bank of Columbia v. Cook, et al., 110 S.C. 99 at 108-109, 96 S.E. 484 (1918).

In conclusion, based upon the facts that you have presented, the mortgage does not appear to have been properly cancelled. See Sections 29-3-330 and 29-3-350 of the Code. Therefore, you should not be required to record it. If any other facts come to your attention which might alter this conclusion, please let us know.

Yours very truly,

Emory

J. Emory Smith, Jr.
Assistant Attorney General

JESjr:djg

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions